IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT
JODHPUR

O R D E R

(1) NAINA RAM v. JAGDISH CHANDRA & ORS.

S.B. CIVIL MISC. APPEAL NO. 1996 OF 2006

(2) SANWALA RAM v. JAGDISH CHANDRA & ORS.

S.B. CIVIL MISC. APPEAL NO. 1997 OF 2006
against the order dated 13.12.2006 passed by the learned Additional District Judge, Bhinmal in Civil Misc. Case No.30/2006.

DATE OF ORDER : 16th JULY, 2007

PRESENT

HON'BLE MR. JUSTICE MANAK MOHTA

Mr. Pradeep Shah, for appellant Naina Ram.
Mr. Rajesh Joshi, for appellant Sanwala Ram.
Mr. R.K.Thanvi, for respondent Jagdish Chandra.

BY THE COURT :

The instant both the appeals have been preferred by defendant-appellants against the order dated 13.12.2006 passed by the learned Additional District Judge, Bhinmal in Civil Misc. Case No. 30 of

2006, whereby, the learned court-below has allowed the injunction application filed by the plaintiff-respondent under O.39 rr. 1 and 2 read with Sec.151, CPC for issuing temporary injunction in his favour to restrain the defendant-appellants from excavating and removing minerals from the mines measuring 4.5 Hectares pertaining to khasra No.1005 ML No.69/99 situated at village Nasoli and further directed the defendant-appellants not to remove the excavated stones lying on the site.

Briefly stated the facts of the case as stated in the plaint are that in the year 2000, the plaintiff and defendant No.1 have decided to start mining work of excavating the granites. It is alleged that in this regard, an agreement was executed on 18.9.2000 between the plaintiff and defendants No. 1 and 2 to the effect that they would work as partners in future, stating therein the shares of each partner in the mining business 40%, 30% and 30% of the plaintiff, defendants No.1 and 2, respectively. It was alleged that defendant No.1 applied for lease of mines in Government Department and the

Mining Department issued acceptance letter dated 2.7.2002 in favour of defendant No.1. A Mining Lease Agreement was executed on 20.8.2002 between defendant No.1 and the Mining Department and on 23.8.2002, the said Lease Agreement was presented in the office of Sub Registrar, Bhinmal for the purpose of its registration and later on got it registered. After registration of the Mining Lease Agreement, the possession of mines was given on 3.7.2004. The mining operation was started and defendant No.2-Naina Ram was deputed to look after the accounting work. On 25.11.2004, the plaintiff and defendants No.1 and 2 gave contract for excavating of stone work to Ratna Ram Choudhary and Gordhan Choudhary @ Rs. 8000/- per Cubic Meter and account of transportation was maintained by Narain Choudhary. It is alleged that later on, ill-motive in the mind of defendants No.1 and 2 developed, defendant No.1 established a separate firm in the name of M/s Rajeshwar Stones, Jalore. The Account of the plaintiff from 1.4.2005 to 28.11.2005 was made available to the plaintiff by Rana Ram with a view to show loss to the plaintiff, they deliberately concealed

the account of the sold granites and the payment received by them against the sale. The plaintiff contacted the businessmen, then, they informed to the plaintiff that they have made payment of the goods to defendants No.1 and 2. It is also stated that during this period one more agreement dated 2.8.2006 was executed by defendant Sanwala Ram and in that agreement, again the share of the plaintiff 40% was admitted in the mining business but even thereafter the attitude of the defendants remained same and they contacted defendant No.3, a person not having good record with intend to oust the plaintiff and from the mining business. It is alleged that in this way, the plaintiff has lost his faith and trust in defendants No.1 and 2 and has alleged that the defendants are working against his interest and causing loss to him, therefore, he filed a suit for accounts and permanent injunction stating therein a claim compensation as 40% share in partnership of Rs.2,00,000/-. Along with suit, he also filed an application for temporary injunction to restrain the defendants from mining operation.

In reply, the defendant No.1 has denied the allegations and also denied to start any joint or partnership business with the plaintiff. He further stated that he moved an application for allotment of mines at his own level, whereupon, a mining patta of the said mines was allotted to him and the same was registered in his name alone in accordance with Rules and he is working in the name and style of M/s Rajeshwar Stones as propriety firm. It was stated that the plaintiff and defendants No.1 and 2 never decided to work jointly on the granite mines. He also denied the execution of the agreement dated 18.9.2000 and further agreement dated 6.8.2006 , alleged to be executed between the plaintiff and defendants No.1 and 2. He also denied the genuineness of the statements of Accounts submitted by the plaintiff along with the suit. It was further stated that the partnership firm was neither ever created nor registered in accordance with the Indian Partnership Act, 1932. It is stated that under the Mines Law, the mining lease cannot be assigned sub-let or otherwise, thus, the suit is hit by Rule 15 of the Rajasthan Minor Mineral Concession Rules, 1986 (for short “the Rules of

1986"), therefore, the suit is liable to be dismissed as barred by law. It was further stated that the plaintiff is not having any right title in the mining lease, therefore, he is not entitled to seek any temporary injunction against defendant No.1 and prayed that his application may be rejected.

Defendants No.2 and 3, in their replies, denied all the averments made in the plaint, they supported the contentions raised by defendant No.1 in the reply and prayed that suit may be dismissed and application filed under O.39 rr. 1 and 2 CPC may be rejected.

After hearing both the parties, the learned trial court found prima facie case in favour of the plaintiff and passed an order dated 13.12.2006 whereby, the temporary injunction was granted in the manner stated above in favour of the plaintiff-respondent No.1-Jagdish Chandra and against the defendant-appellants No.1 and 2, hence this appeal.

I have heard learned counsel for the parties and carefully perused the record of the case as well as order passed by the learned lower court.

During the course of arguments, the learned counsel for the defendant-appellants submitted that the learned lower court has not properly considered the facts and the contentions raised by them, passed an erroneous order on the application for temporary injunction, that is not sustainable. It was contended by the learned counsel for the appellant Sanwala Ram that the entire case of the plaintiff-respondent is based on the agreement dated 18.9.2000 but the appellant has denied the execution of that agreement and without proved that cannot be made the basis of any finding but the learned lower court has acted on this document as proved, therefore, the finding of the learned lower court is not tenable. It was further contended that the plaintiff-respondent while relying on this document has asserted his right as partner in the mining business but this document can neither to be said as partnership nor on the basis of this document, the firm has been

registered under the Indian Partnership Act, 1932 as legally required for valid status. Thus, no importance can be given to this document, which is neither established nor having any legal status. The learned lower court also while discussing the prima facie case has observed that this document cannot be treated as partnership but contrary to this finding, the learned lower court has recognized 40% share of the plaintiff in the mining business on the basis of this document, therefore, the finding of the learned court below believing the prima facie case in favour of the plaintiff, is contradictory and liable to be quashed. The learned counsel for the appellant further urged that the entire suit is based on the partnership and relief also demanded accordingly and the learned lower court also erroneously has granted the relief on the same line but that is contrary to law. Under Sec.69 of the Partnership Act, 1932, on the basis of such document, the suit is not maintainable but the learned lower court has not properly considered this important aspect of the case.

The learned counsel for the appellant

Sanwala Ram submitted that the mines in question have been allotted in his name alone, thus, he is the exclusive owner and in possession of the mines and is running his business in his own name. The plaintiff-respondent has no right, title or any sort of interest over the mines. It was urged that under Rule 15 of the Rules of 1986, it is clearly debar for execution of any agreement/ assignment/commencement/sublet of mining lease, therefore, the contentions of the plaintiff-respondent is against the public policy and in violation of the statutory provisions, thus, no right and interest can be claimed but the learned lower court has not considered this important aspect of the case in right perspective. It was contended by the learned counsel that the plaintiff-respondent has no prima facie in his favour. It was also contended that other ingredients for issuing temporary injunction are also not in his favour. No irreparable loss and balance of convenience would cause to the plaintiff-respondent in not granting temporary injunction. On the contrary, the defendant-appellant would suffer a huge loss in case temporary injunction is continued, he will be deprived of his legal

exclusive right to use mines and to earn profit, otherwise, he will be deemed to be out of possession.

The learned counsel for the other appellant also contended that the plaintiff-respondent is neither a partner nor any partnership firm, is in existence, therefore, the suit and application for temporary injunction both are misconceived and no relief could have been granted. It was also contended that the plaintiff-respondent has no right, title in the mines, thus, any injunction order in his favour in that respect, is totally not sustainable. The learned lower court without considering the full facts in a hasty manner has passed an erroneous order that is liable to be quashed. The learned counsel for the appellants also placed reliance on the decisions rendered in (1) N.Umapathy v. B.V.Muniyappa (AIR 1997 SC 2467), (2) R.S.R.T.C. and others v. Hardan Singh (2005 (5) WLC (Raj.) 384), (3)-Anant Shri Sukhramji Trust and another v. Union of India and others (AIR 1972 Raj 32) and (4)-Anand v. Smt. Sarda (1997(2) RLW (Raj) 1178). On the basis of these submissions, it was prayed that the appeals may

be allowed and the order of temporary injunction dated 13.12.2006 be quashed and set aside.

On the contrary, the learned counsel for the plaintiff-respondent Jagdish Chandra refuted the contentions raised by the appellants' side and supported the order of the learned lower court. It was contended that the agreement dated 18.9.2000 is duly signed by the defendants, attested by the witnesses and verified by the Notary Public. Further the existence of acceptance of 40% share of plaintiff-respondent in the mining business is well established by subsequent agreement dated 2.8.2006 executed by defendant No.1 Sanwala Ram, therefore, on the basis of these agreements, the plaintiff has a strong prima facie case in his favour. The learned lower court has rightly acted on these documents and has passed a just and reasonable order. It was urged that the order is not suffering from any infirmity, therefore, no interference is required and that should be maintained. It was further submitted that the plaintiff and defendants No.1 and 2 were agreed to share profit and loss in the ratio given in

the agreement but later on the intention of the defendants became bad and they tried to oust the plaintiff-respondent, for that, he has filed a suit on the basis of the agreement. The suit is maintainable and his right has been protected by temporary injunction order, otherwise, the purpose of filing the suit will be frustrated and the plaintiff will suffer an irreparable loss. The learned counsel also cited the decisions given in the cases; (1) Sree Jain Swetambar Terapanthi Vid (S) v. Phundan Singh and others (AIR 1999 SC 2322), (2)-M/s Apsara Hotels (P) Ltd. & others v. M/s Rajputana Hotels (P) Ltd and others (AIR 1981 NOC (Raj.) 201), (3)-Smt.Vimla Devi v. Jang Bahadur (1977 RLW 326) (4)-Ranjeet Mal Nalwaya v. Hukamchand & others (1980 (30) ILR (Raj) 1033), (5)-Mirza Mohammed Yousuf Baig v. M/s Deccan Enterprises & others (1966 AIHC (Karnataka) 3132), and (6)-Ratan Kumar Malpani v. M/s Bharat Cinema & others (1996 (2) RLR 639) in support of his contentions and it was prayed that the order of temporary injunction be continued and the appeals may be dismissed.

I have considered the rival submissions made by the parties and have gone through the impugned order under appeal passed by the learned lower court. I have also perused the authorities cited by the learned counsel for the parties. The main contention in this appeal for consideration is that whether the plaintiff-respondent No.1 Jagdish Chandra on the basis of agreement dated 18.9.2000 is having prima facie case in his favour for issuing temporary injunction as concluded by the learned lower court. It is revealed from the record that the plaintiff-respondent has filed a suit on the basis of the agreement dated 18.9.2000. The execution of the agreement has been denied by the defendant-appellants. From perusal of the agreement dated 18.9.2000, it seems that the parties were agreed to form a partnership business in future after execution of the lease agreement by the department but thereafter neither partnership deed was executed nor any registration of the firm was done under the Indian Partnership Act, 1932. The agreement dated 18.9.2000 in this way, cannot be treated as partnership deed. The plaintiff-respondent, on the basis of this

agreement, has filed a suit for accounts but on the basis of this agreement without expressing anything on the merit of the case, prima facie, no right has been created in the said mines. It is further revealed from the record that mines in question have been allotted exclusively in the name of defendant-appellant No.1. The plaintiff-respondent has not able to establish by any documentary evidence that is mines in question are joint property. Thus, on the basis of the agreement dated 18.9.2000 and on the second agreement dated 2.8.2006, the plaintiff prima facie has not accrued any right, title and interest in the mines. The learned lower court has observed that the agreement dated 18.9.2000 is not partnership deed but has relied upon the same agreement accepting the plaintiff as partner in mining business. In my opinion, the finding of the learned lower court is contradictory and is not tenable. On the basis of the agreement dated 18.9.2000, prima facie, no right or interest accrued to the plaintiff-respondent in the mines. The plaintiff-respondent has filed some documents but they all are subjected to prove, no conclusion can be based on that. The mines stand

today in the name of appellant Sanwala Ram and legally he is alone owner and in possession thereof, therefore, prima facie, as per the Rules of 1986 as contended by the appellant, under Rule 15, no further agreement/ assignment/commencement/sublet is permissible. From this count also, on the basis of the alleged record, the agreement dated 2.8.2006, the plaintiff has not accrued any prima facie right over the mines. In this way, the finding of the learned lower court that on the basis of the agreement dated 18.9.2000, the plaintiff is having interest in the mines, is not sustainable and liable to be quashed. The decision cited by the appellant in the case of N.Umapathy (supra) also supports the conclusion that the possession of recorded mines allottee be protected. On the other hand, the decisions cited by the respondents in the cases of Sree Jain Swetambar Terapanthi (supra), Smt. Vimla Devi (supra) and Mirza Mohammed Yousuf Baig (supra), the powers of the appellate court have been dealt with but as per aforesaid discussion, the findings of the learned lower court is perversed, arbitrary and not sustainable. In these situation, these decisions do not help the

contentions of the respondent. Thus, the plaintiff-respondent was not having prima facie case to this extent to stay the mining operation for which the appellant is legally entitled to operate and other ingredients were also not in favour of the plaintiff-respondent. The impugned order dated 13.12.2006 is not sustainable and liable to be quashed and set aside.

In the result, both the appeals filed by the defendant-appellants are allowed and the impugned order dated 13.12.2006 is set aside. The defendant-appellants are further directed to maintain complete accounts of mining excavation and material collected from the mines, stored and sold in the market for that they will file undertakings in the lower court that the accounts will be kept ready and they will be produced in the court as and when demanded by the trial court. Without influencing from any observations made in this order, the learned lower court will expedite the hearing of the case as possible. No order as to costs.

(MANAK MOHTA),J.